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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------|
| 10/605,264   | 09/18/2003  | Kazuhiro Takeda      | SIC-03-034                    | 2263             |
| 29863  | 7590        | 10/01/2007           |                               |                  |
| DELAND LAW OFFICE<br>P.O. BOX 69<br>KLAMATH RIVER, CA 96050-0069 |             |                      | EXAMINER<br>DAGER, JONATHAN M |                  |
|  |             |                      | ART UNIT                      | PAPER NUMBER     |
|  |             |                      | 3663                          |                  |
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|  |             |                      | 10/01/2007                    | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/605,264 | <b>Applicant(s)</b><br>TAKEDA, KAZUHIRO |  |
|                              | <b>Examiner</b><br>Jonathan M. Dager | <b>Art Unit</b><br>3663                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 5, 10, 16-34 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-15, 35-38, and 40-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07 August 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments, see page 7, filed 07 August 2007, with respect to the rejection of claim 13 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, have been fully considered and are persuasive. The rejection of claim 13 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, has been withdrawn.

Applicant's arguments, see page 7, filed 07 August 2007, with respect to the rejection of claims 1 and 15 under 35 U.S.C. 103(a), have been fully considered and are not persuasive.

The Applicant states that Hickman (US 6,921,351), as modified by Shea (US 6,171,218), does not disclose or teach all of the embodiments of the amended claim 1.

The Examiner disagrees; regarding claim 1, Hickman discloses an exercise system where the local computer controls and monitors the operation and use, respectively, of the exercise apparatus. The system further includes a remote system having a remote computer, and a transmission medium preferably including the Internet that couples the local system to the remote system for data communication between the local system and the remote system. The remote system may receive local system data from the local system concerning the use of the exercise apparatus, and the local system may receive remote system data from the remote system concerning the operation of the exercise apparatus (abstract).

Further, Hickman discloses that the remote server can provide for competitions and group exercising between virtually any numbers of users in any number of locations. Some of the users may be in fixed locations (such as on a rowing machine or a stationary bicycle), while other users may be in mobile locations, such as bicyclists and joggers. With appropriate handicapping, a person on a stationary bicycle can race with a person on a road bicycle (or even join the Tour de France), or with a person on a rowing machine. Further, "virtual" competitions can be held wherein an exercise device represents, for example, a spaceship, such that the more energy expended by the user results in faster spaceship movement. Such "virtual" competitions may use standard sensor of the exercise equipment to "steer" the spaceships. For example, a person on a fixed rowing machine could steer by pulling harder on one oar than another, or "fire" a missile by pushing forward on both oars. However, it is anticipated that various "out of band" signals may also be used to create a virtual competition (column 2 lines 52-67).

It is an inherent characteristic of competition between a plurality of contestants is that there will be a winner and a loser. Additionally, with multiple users, a ranking system would be presented to determine who won, came in second place, etc.

As to limitations which are considered to be inherent in a reference, see MPEP 2112.01.

Also, Hickman discloses an exercise device controller 280 includes an interface controller 282, a sensor 284, and a transmitter 286. By "transmitter" 286, it is meant that the appropriate drivers are provided to create a signal 288 which can be transmitted to a local server via wired, optical, wireless, or other transmission media. The sensors 284 are preferably coupled to a resistance mechanism or actuator 290. The interface controller preferably also includes a device ID 292, a user ID 294, switches and keyboard 296, and a display 298, such as a flat panel display. The controller 280 can also optionally include an actuator 300 and a receiver 302. The receiver 302, like the transmitter 286, can receive a signal 304 via a variety of transmission media including wired, wireless, optical, fiber optic, etc.

Lastly, FIG. 31 illustrates a possible screen that can be displayed on the personal computer system 262A of a trainer 276A. As described previously, in a preferred embodiment of the present invention, the computational functionality with respect to the trainer machine 264A is provided by the Cybergym server 258. Therefore, the trainer 276A needs only to install a network browser on his trainer machine 262A to enjoy full

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functionality of the system 250. In this instance, the trainer 276A point to his browser to a URL 588, namely <https://www.trainer.Cybergym.net>. This brought up the display allowing the trainer to choose from a number of options. For example, the trainer can choose option: 1) coach online clients; 2) coach offline clients; 3) manage his or her coaching business; and, 4) communicate with Cybergym management. As is well known to those skilled in the art, the trainer 276A can select one of these options with a pointer 590 controlled by a pointing device such as a mouse or trackball. The trainer 276A then "clicks" on the pointer 590 by depressing the button on the mouse or trackball to select the appropriate next screen. It should be noted that these communications are all secured and encrypted, and are run over a secure connection (columns 27 and 28, lines 64-67 and 1-18, respectively).

FIG. 32 illustrates a screen 592 which can be accessed by selecting the "Coach Online Clients" option from the list on screen 586. This is again a secure connection and it indicates all of the users in the group belonging to trainer 276A that are currently online. If the user has an exercise device provided with a video camera, the image of the user is displayed on the screen as shown (column 28, lines 19-24).

It is noted that claims 1 and 15 contain statements of intended use or field of use (e.g. "a user registration unit that registers", "an information delivery unit that delivers", "wherein....provides", "wherein...communicates", etc.). These statements of intended use or field of use, and "wherein" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements

of intended use do not serve to patentably distinguish the claimed structure over that of the reference.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. Apparatus claims cover what a device is not what a device does.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Additionally, the terms "configured to" or "arranged to" are considered to be structurally modified statements and are not intended use. Claims amended to include the above listed language may patentably distinguish themselves structurally.

Applicant's arguments, see page 8, filed 07 August 2007, with respect to the rejection of claims 43-50 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, and 35 U.S.C. 101, have been fully considered and are persuasive. The rejections of claims 43-50 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, and 35 U.S.C. 101, have been withdrawn.

Applicant's arguments, see page 8, filed 07 August 2007, with respect to the rejection of claims 43-50 under 35 U.S.C. 102(e), have been fully considered and are persuasive. The rejections of claims 43-50 under 35 U.S.C. 102(e) have been withdrawn.

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Applicant's arguments, see page 8, filed 07 August 2007, with respect to the rejection of claims 39-42 under 35 U.S.C. 103(a), have been fully considered and are not persuasive.

Applicant states that none of the references alone or in combination disclose or suggest automatically providing ranking data of one user relative to another (found in claim 42).

The Examiner respectfully disagrees; while all listed references alone or in combination might not explicitly state said automatically providing ranking data of one user relative to another, it is noted that the claim language is drawn to the intended use of the apparatus.

Again, These statements of intended use or field of use, and "wherein" clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. Apparatus claims cover what a device is not what a device does.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.



Additionally, the terms "configured to" or "arranged to" are considered to be structurally modified statements and are not intended use. Claims amended to include the above listed language may patentably distinguish themselves structurally.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 43-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. (US 6,458,060), and further in view of Hickman et al. (US 6,921,351)

Regarding claims 43-50 Watterson discloses an invention in which one or more exercise mechanisms, such as a treadmill 12a-12n is in communication with one or more trainers at treadmill 20a-20n via a translator device 13 and a personal computer 14. The translator device 13 and personal computer 14 communicate with a network 16 that is a communication network that enables various hardware and software modules and devices to communicate one with another. Network 16, therefore, may be a local area network (LAN), wide area network (WAN), wireless network, packetized network, real-time network, and the like. Network 16 facilitates communication of treadmill 12 with a live trainer on treadmill 20 and/or communication system 18 (e.g. a website). Communication system 18 assists communication between a user on treadmill 12 and either a live trainer on treadmill 20, or some other third party 21, as will be described in

more detail hereinafter. Optionally, communication system 18 acts as a stored trainer or connects to a stored trainer (column 6 lines 21-28).

Additionally, Watterson discloses that the term "exercise devices" shall refer broadly to any type of device that takes the form of an exercise machine, including, but not limited to, treadmills, exercise cycles, Nordic style ski exercise devices, rowers, steppers, hikers, climbers, and elliptical or striding exercise devices (column 6 lines 10-15).

Next, Watterson discloses that a stored trainer (e.g., a website) controls a user device without requiring the services of a live trainer. The present invention also enables first and second users to compete against each other by connecting their corresponding exercise devices to a communication system, such as a website.

Watterson also discloses that the communication module 254 includes a login-registration module 302 that is accessible via iFit.com website 300. Login -registration module 302 is configured to obtain the necessary registration and login information from a user wishing to use communication module 254 and the various audio/video and literary information contained therein, with their exercise device (column 35 lines 35-42).

Figures 17a-d discloses the process in which multiple (registered) users can compete with each other.

3. Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. See MPEP 2125.

Watterson discloses that when a race around the world race type is selected, competition module 314 retrieves the stored statistical information of the user, as depicted by block 410. The statistical information may include, but is not limited to, distance traveled by the user, average speed of the user, and the like. Once competition module 314 selects the stored statistical information, such information may be compared against other competitors in the race, as depicted by block 412. Competition module 314 may deliver comparison data to communication module 254. In turn, communication module 254 may deliver a graphical representation of the user's exercise distance, times, speed, and other information compared against other competitors to the user via user module 252a-252n. A user module 252a-252n or a user operating treadmill 12, for example, may view their distance and times with respect to other competing users of user modules 252a-252n, thereby being motivated to exercise more. Once such information is depicted, the user may modify their existing exercise programs to either increase or decrease exercise parameters of the programs. For example, if the user sees that they have not run as many miles as other competitors, they may increase the distance to be run in the future. Once the user is ready, the user may begin or continue the race, as represented by block 414. As the user exercises communication module 254 records new statistical information for the user, such as speed, distance traveled, calories used, and the like (columns 40-41, lines 48-67, and 1-8, respectively).

Finally, Watterson discloses that various other configurations of the race around the world type race are applicable and known to one skilled in the art. For example, in

another configuration of the race around the world type race, a user may select a particular time period, say from January 1 to February 1, and race against others to see who travels the furthest distance within the given time period. Again, communication module 254 tracks the distance traveled of each competitor and may provide graphical representations of the position of one competitor against the other competitors. In still yet another configuration, the race around the world may include racing over various types of terrain ranging from deserts, mountains, and the like. As such, each competitor follows a similar overall exercise profile and communication module 254 tracks the time that a user takes to complete the race, for example, when a user slows down the treadmill based upon the terrain traversed (column 41 lines 8-25).

Watterson discloses all embodiments of claims 43-50, but does not explicitly using an actual terrain-traversing bicycle with means for locating competitors; only using an exercise machine/bicycle.

4. Hickman, however, teaches a system in which the server 272A is also preferably included with a variety of sensor inputs, including GPS from multiple satellites 578, altimeter readings based on, for example, atmospheric pressure or, alternatively calculated from GPS information, inclinometers, etc. In this fashion, a mobile exercise device user can interact with a remote server, a trainer, or compete against other mobile and/or fixed exercise devices (column 27 lines 13-19).

Thus, it would be obvious to modify the invention of Watterson with the teachings of Hickman to enable competition among bicycles in which the users can select and

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receive information about other registered riders. Doing so would enhance competition among users.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan M. Dager whose telephone number is 571-270-1332. The examiner can normally be reached on 0830-1800 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JD

26 September 2007

  
JACK KEITH  
SUPERVISORY PATENT EXAMINER